

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO: 3:04CV231**

<b>BLIS DAY SPA, LLC and TAMI M. CURTIN, )</b>	
Plaintiffs )	
) )	
) )	
<b>vs. )</b>	<b><u>ORDER</u></b>
) )	
<b>THE HARTFORD INSURANCE GROUP, )</b>	
Defendant. ) )	
) )	

**THIS MATTER IS BEFORE THE COURT** on the “Defendant’s Verified Motion to Strike and Preclude Evidence” (“Motion to Strike”) (Document No. 17) and the “Memorandum of Law in Support of Defendant’s Motion ...” (Document No. 24), both filed January 31, 2005 by The Hartford Insurance Group (“Hartford”); the “Plaintiff’s Response to Defendant’s Motion ...” (Document No. 29), filed March 18, 2005 by Blis Day Spa, LLC (“Blis Day Spa”) and Tami M. Curtin; and “Defendant’s Reply Brief in Support ...” (Document No. 32), filed April 11, 2005 by Hartford. For the reasons set forth in the hearing held Monday, May 23, 2005, the undersigned will deny the Motion to Strike.

**IT IS, THEREFORE, ORDERED** that the “Defendant’s Verified Motion to Strike and Preclude Evidence”(Document No. 17) is hereby **DENIED**. The Court assures Hartford that, in its consideration of the pending dispositive motion, the Court will consider only evidence properly before it in accordance with the Federal Rules of Evidence and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and its progeny. If the case is not resolved on dispositive motion, Hartford will be expected to make any further Daubert-type motions prior to trial.

**IT IS FURTHER ORDERED** that the Pretrial Order, filed on June 16, 2004, is hereby amended as follows:

1. Discovery is reopened for the sole purpose of taking a second deposition of Jack Heil only with respect to issues contained in the "Expert Report of Jack Heil," dated December 22, 2004. The deadline for the taking of such deposition is June 30, 2005.
2. A supplement, if any, to the pending dispositive motion by Hartford shall be filed no later than August 1, 2005.
3. The trial date will be set for the Civil Term beginning November 20, 2005. Questions regarding the trial date should be directed to the presiding judge.

**Signed: May 24, 2005**

David C. Keesler  
David C. Keesler  
United States Magistrate Judge

